

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS EVANS SEYMOUR,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C21-5213-MAT

ORDER

THIS MATTER comes before the Court on Plaintiff motion for attorney's fees (Dkt. 27) (Motion) filed pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. The Commissioner opposes the Motion in part (Dkt. 28) and requests that fees be reduced. In his reply (Dkt. 29), Plaintiff agrees to a fee reduction of \$804.90 and amends his fee request to account for the time spent drafting the reply.

Having reviewed and considered the parties' briefs, and for the reasons discussed below, the Court finds that duplicative amounts and amounts billed for clerical tasks should not be compensated. Accordingly, the Court GRANTS IN PART and DENIES IN PART the Motion.

DISCUSSION

Under the Equal Access to Justice Act (EAJA), the Court awards fees and expenses to a

1 prevailing party in a suit against the government “unless the court finds that the position of the
2 United States was substantially justified or that special circumstances make an award unjust.” 28
3 U.S.C. § 2412(d)(1)(A).

4 Plaintiff initially requested an award of EAJA fees in the amount of \$5,649.21, expenses
5 in the amount of \$17.58, and costs in the amount of \$402.00. Dkt. 27. The Commissioner opposes
6 the Motion in part and requests that the Court exercise its discretion to reduce the initial fee request
7 to \$4,427.60. Dkt. 28. The Commissioner does not oppose Plaintiff’s request for expenses and
8 costs. *Id.* at 6. In response, Plaintiff agrees to a fee reduction of \$804.90 for time spent
9 unsuccessfully pursuing arguments under *Seila Law*¹ and further amends his fee request to include
10 \$913.67 for time spent drafting the reply. Dkt. 29, at 4–5. Accordingly, Plaintiff’s amended request
11 seeks attorney fees in the amount of \$5,757.98. *Id.* at 5.

12 Where attorneys’ fees are available, the district court must determine what constitutes a
13 reasonable attorneys’ fee. *See Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir.
14 2012). The Court applies the principles established for determining a reasonable fee award set
15 forth in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), and other cases interpreting 42 U.S.C.
16 § 1988. *See id.* Under *Hensley*, the Court may exclude from the fee calculation hours that were not
17 “reasonably expended.” 461 U.S. at 434. “[T]he fee applicant bears the burden of establishing
18 entitlement to an award and documenting the appropriate hours expended.” *Id.* at 437. If the
19 government disputes the reasonableness of the fee, it “has a burden of rebuttal that requires
20 submission of evidence to the district court challenging the accuracy and reasonableness of the
21 hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v.*

22
23

¹ Because Plaintiff has withdrawn his request for fees for time spent pursuing arguments under *Seila Law*,
the Court does not reach the merits of this request.

1 *Deukmejian*, 987 F.2d 1392, 1397–98 (9th Cir. 1992). The Court has an independent duty to review
2 the submitted itemized log of hours to determine the reasonableness of hours requested in each
3 case. *See Hensley*, 461 U.S. at 433, 436–37. However, “a district court can impose a reduction of
4 up to 10 percent—a ‘haircut’—based purely on the exercise of its discretion and without more
5 specific explanation.” *Costa*, 690 F.3d at 1136 (citing *Moreno v. City of Sacramento*, 534 F.3d
6 1106, 1112 (9th Cir. 2008)).

7 **1. Duplication of Effort**

8 The Commissioner argues that Plaintiff’s fee request should be reduced by \$239.29 to
9 exclude time spent by attorneys Melissa DelGuercio (.8 hours) for reviewing drafts of the opening
10 and reply briefs prepared by another attorney and Edward Wicklund (.3 hours) for assessing the
11 Commissioner’s response brief, which time the Commissioner argues was duplicative of effort.
12 Dkt. 28, at 3–4. Plaintiff argues that collaboration between attorneys is not unreasonable and that
13 different attorneys reviewed the brief for different purposes. Dkt. 29, at 2. The Court agrees that it
14 is not unreasonable for a draft to undergo peer review. Here, however, Plaintiff billed not only for
15 Melissa DelGuercio to review and edit the draft opening brief and reply brief (.8 hours) but also
16 for Maren Bam to review and edit the draft briefs a second time (.5 hours). *See* Motion Ex. B, at
17 2. Although Plaintiff argues in briefing that the attorneys reviewed the briefs for different purposes,
18 Plaintiff’s attorney time log describes both attorneys performing essentially the same function. *See*
19 *Neil v. Comm’r of Soc. Sec. Admin.*, 495 Fed. App’x 845, 847 (9th Cir. 2012) (a district court is
20 within its discretion to reduce fees where time entries are “vague and inadequately explained”).
21 Therefore, the Court reduces the fee request by .6 hours of attorney time (\$130.52) to exclude
22 unreasonable duplication of attorney time spent reviewing and editing the draft briefs.

23 Plaintiff further argues that .3 hours spent by Edward Wickland, a senior attorney,

1 reviewing and assessing Defendant's response is not duplicative. Dkt. 29, at 2. Plaintiff's attorney
2 time log does not describe any other attorney performing essentially the same function as
3 Mr. Wickland in reviewing the response brief and assigning a writer to assess the reply. *See* Motion
4 Ex. B, at 2. Courts should generally defer to the "winning lawyer's professional judgment as to
5 how much time he was required to spend on the case." *Moreno*, 535 F.3d at 1112. Because the
6 Commissioner has failed to show that the time spent by Mr. Wickland was duplicative, the Court
7 declines to exclude .3 hours of attorney time from Plaintiff's fee request.

8 **2. Clerical Tasks**

9 The Commissioner argues that Plaintiff's fee request should be reduced by \$195.00 to
10 exclude time spent by paralegals performing clerical tasks. Dkt. 28, at 4–5. Specifically, the
11 Commissioner argues that time spent reviewing and processing the files from the referral source
12 (.6 hours), discussing IFP assessment and filing fees with the client (.2 hours), preparing and
13 reviewing a retainer agreement and other representative documents for client signing (.9 hours),
14 preparing service packets (.6 hours), filing proof of service with the court (.2 hours), and emailing
15 with opposing counsel regarding briefing deadlines (.1 hours) are clerical tasks that should not be
16 billed under EAJA. *Id.*

17 The Court may reduce attorney's fees "for purely clerical tasks." *Neil*, 495 Fed. App'x at
18 847; *see also Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989) (holding an attorney may not
19 seek fees for purely clerical tasks at an attorney rate); *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th
20 Cir. 2009) (citations omitted) (holding clerical and organizational tasks "should have been
21 subsumed in firm overhead rather than billed at paralegal rates"). Here, the Court finds several of
22 the challenged paralegal time to be not purely clerical in nature. Specifically, the record shows that
23 the Olinsky Law Group did not represent Plaintiff in the underlying administrative proceedings;

1 therefore, it is reasonable that a paralegal would spend .6 hours reviewing and processing the files
2 received from the referral source for attorney review. Further, the Court finds that it is reasonable
3 and appropriate to spend .2 hours communicating with the client, .2 hours filing proof of service
4 with the court, and .1 hours communicating with opposing counsel regarding court-imposed
5 deadlines, which activities involve the fair and ethical representation a client.

6 However, the Court finds preparing service packets for service of process to be a purely
7 clerical task and declines to award .6 hours of paralegal time (\$45.00) spent performing this
8 activity. *See Neil*, 495 Fed. App'x at 847 (not an abuse of discretion to deny fees for preparing and
9 serving summons). Further, the Court finds .9 hours to be an excessive amount of time spent
10 toward preparing and reviewing a retainer agreement and other unspecified representative
11 documents for client signing and, therefore, deducts .5 hours of paralegal time (\$37.50) expended
12 performing this activity.

13 **3. Fees for Defending the EAJA Motion**

14 Plaintiff's attorney requests an additional 4.2 hours of attorney time (\$913.67) expended
15 defending the Motion and drafting the reply. Dkt. 29, at 4–5. Plaintiff's attorney has largely
16 prevailed in the request for attorney fees and, considering the facts and arguments relevant to this
17 case, the Court grants fees for preparing the reply. *See Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 162
18 (1990) (fees for time and expenses incurred in applying for fees covered in EAJA cases).

19 **CONCLUSION**

20 For the reasons discussed above, the Court GRANTS IN PART and DENIES IN PART
21 Plaintiff's Motion for Attorney's Fees (Dkt. 27). The Court reduces Plaintiff's amended fee request
22 by \$213.02. Accordingly, attorney fees in the amount of \$5,544.96, costs in the amount of \$402.00,
23 and expenses in the amount of \$17.58 are hereby awarded to Plaintiff under EAJA.

1 If the U.S. Department of the Treasury determines that Plaintiff's EAJA fees, expenses,
2 and costs are not subject to offset allowed under the Department of the Treasury's Offset Program
3 (TOPS), then the check for EAJA fees, expenses, and costs shall be made payable to Olinsky Law
4 Group and mailed to the following address: 250 South Clinton Street Suite 210, Syracuse, NY
5 13202.

6 DATED this 24th day of May, 2022.

7
8 
9 MARY ALICE THEILER
United States Magistrate Judge